

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4**

**AIR LIQUIDE ADVANCED TECHNOLOGIES
U.S. LLC¹**

Employer

and

Case 04-RC-266637

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
DISTRICT LODGE 1, AFL-CIO**

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

This case presents three issues: whether the only appropriate unit requires the inclusion of a number of additional classifications in the petitioned-for unit, whether certain employees are supervisors, and whether others are professional employees. Air Liquide Advanced Technologies U.S. LLC (the Employer) is engaged in the manufacture of gas separation membranes at its Newport, Delaware facility, the only facility involved herein. International Association of Machinists and Aerospace Workers, District Lodge 1, AFL-CIO (Petitioner) filed a petition under Section 9(c) of the National Labor Relations Act, as amended (the Act) seeking to represent a production and maintenance unit² of all full-time and regular part-time manufacturing operators (including lead manufacturing operators), maintenance technicians, quality control (QC) laboratory technicians (including lead lab technician), materials coordinator, shipping coordinator, and packing coordinator³ employed by the Employer⁴ at its Newport, Delaware facility. The Employer maintains that the unit sought by Petitioner is not appropriate because it is a fractured unit, and that the smallest appropriate unit must also include the following classifications: engineering specialist, process engineer, engineering technician, instrumentation and automation (I&A) technician, I&A engineer (also called process automation engineer), I&A specialist, strategic inventory and supply chain specialist, production planner, and design draftsman. Additionally, the Employer contends that the lead QC laboratory technician and lead

¹ As noted in Board Exhibit 2, the parties stipulated to amend the petition and the formal documents to correctly reflect the name of the Employer as set forth above.

² On its face, the petition seeks a unit of "Manufacturing, Maintenance Shop, Quality Control, Shipping and Receiving" employees.

³ Shipping, packing and materials coordinators will be collectively referred to as warehouse employees.

⁴ The parties stipulated, and I find, that the Employer is a Delaware corporation engaged in membrane manufacturing, biogas technology sales, and plant construction and operation out of its facility located at 305 Water Street, Newport, Delaware (the Newport facility). During the past 12-month period, the Employer purchased and received goods and services valued in excess of \$50,000 directly from customers located outside of the State of Delaware.

manufacturing operators within the petitioned-for unit are supervisors who should be excluded under Section 2(11) of the Act. Finally, the Union argues that, should I find that the contested classifications must be included in the bargaining unit, I should also find that all of the salaried classifications are professional employees within the meaning of Section of the Act.

A hearing in this matter was held via videoconference before a hearing officer of the National Labor Relations Board on October 16, 20, and 21, 2020⁵, and the parties subsequently filed briefs. I have carefully considered the positions and arguments presented by the parties on these issues. As explained below, based on the record and relevant Board law, I find that the unit sought by Petitioner is not appropriate, and that the only appropriate unit requires the inclusion of all of the contested classifications. I further find that the Employer has failed to meet its burden of establishing that the lead employees in question are supervisors under Section 2(11) of the Act.

I will also address whether to direct a manual or mail-ballot election given the current extraordinary circumstances arising from the COVID-19 pandemic. Election details, including the type of election to be held, are nonlitigable matters left to the discretion of the Regional Director, but the parties were permitted to argue their positions as it relates to the mechanics of this election. For the reasons discussed below, I find that a mail-ballot election is appropriate.

A. Factual Overview

I. The Employer's Operation

a. The Employer's organizational structure and facility layout

The Employer, a global manufacturing company with a presence in more than 80 countries and 65,000 employees worldwide, produces and delivers gases and gas-producing systems to its customers. It comprises a number of different business units, including the membrane manufacturing unit involved in this case, which produces polymer gas separation membranes and membrane systems that are used by customers to separate the elements of gases for use in a wide variety of applications. Although the Employer manufactures these thin hollow fiber membranes at both its Newport, Delaware and Woburn, Massachusetts facilities, only the Newport facility is at issue here. The Employer produces two different platforms of product: the MEDAL platform, and the IMS platform. While the technology for each is similar, they have slightly different production processes and are used for different applications by customers. As of the hearing dates, the Newport facility operated 24 hours a day, seven days a week, to manufacture, store and ship membranes to its customers.

Sarang Gadre has served as Senior Director of Membrane Manufacturing at the Newport facility since March 2019. Gadre reports to the Employer's CEO, Dan Crouse. In the manufacturing unit, six department heads report to Gadre: (1) Director of Operations of Membrane Manufacturing Swapan Rahman, (2) Senior Manager of Manufacturing Technology Tim

⁵ All dates herein are in 2020, unless specified otherwise.

Poludniak, (3) Continuous Improvement and Quality Control Director Ron Shewchuk, (4) Senior Manager for Production Planning and Procurement Laura Kraucunas, (5) Senior Manager, Safety and Security Harrison Abinteh, and (6) Document Control Coordinator and Office Administrator Donna O'Connor. Of these six, only Abinteh and O'Connor do not supervise any employees at issue in this matter.

Director of Operations Rahman is based out of the Employer's plant in Woburn, Massachusetts, but is responsible for manufacturing at the Newport facility, which he visits every other week.⁶ Three managers at the Newport facility report directly to him.⁷ Two of those managers have employees in the petitioned-for unit: Production Manager Tom Broccoli, who supervises a team of four production supervisors and approximately 62 manufacturing operators, including nine lead operators the Employer alleges are supervisors; and Facility Maintenance Manager Scott Hall, who is in charge of three maintenance technicians. The third manager, Process and Control Engineer Steve Mobley, oversees the I&A group with an I&A technician, and I&A engineer, and an I&A specialist. The Employer asserts all three should be in the unit.

Production Planning Manager Kraucunas oversees Warehouse Supervisor Scott Mahoney, who is responsible for the warehouse employees in the petitioned-for unit; Kraucunas also directly supervises a production planner and a supply chain and materials manager, both classifications the Employer seeks to add to the unit.

Quality Control Director Shewchuk has one direct report, Quality Control Supervisor Lyn Imperial, who supervises seven petitioned-for QC lab technicians including the lead QC lab technician that the Employer asserts is a supervisor.

Finally, Manufacturing Technology Manager Poludniak is responsible for employees in the technology group, all of whom the Employer contends should be added to the unit. Poludniak has two managers at the Newport facility who are direct reports: Steve Rutledge, the MEDAL platform manager, and Betty Ray, the IMS platform manager. In addition, there are five process engineers⁸, three engineering technicians, an engineering specialist and a design draftsman at the Newport facility. Of these, Poludniak directly supervises two process engineers, two engineering technicians, and the design draftsman,⁹ Rutledge supervises two process engineers and an engineering specialist, and Ray supervises one process engineer and an engineering technician.

The Employer's facility comprises a number of separate buildings.¹⁰ The various steps in the manufacturing process occur in Buildings 100, 300, 500, 600 and 700. In addition to manufacturing, Building 100 also contains quality control operations and engineering technician and engineering specialist cubicles, and Building 500 houses the maintenance shop, which has

⁶ The record does not reflect how much time Rahman spends at the Newport facility.

⁷ Although not at issue here, Rahman also has groups of employees at the Woburn facility who report to him.

⁸ Process engineers are also referred to as mechanical engineers.

⁹ Like Rahman, Poludniak also supervises employees at the Employer's Woburn plant. Those employees are not discussed here.

cubicles for the maintenance technicians. Product is post-treated and tested in Building 700 before moving to the shipping and receiving and warehouse areas in Building 800 to be packed and prepared for shipment. Materials used in manufacturing are stored in Building 400, and Building 200 contains offices occupied by process engineers, I&A employees, the strategic inventory and supply chain specialist, and the design draftsman.

At the onset of the COVID-19 pandemic, the Employer was classified as an essential infrastructure business. As such, it operated continuously during the pandemic, although it implemented changes to adhere to social distancing guidelines. To avoid a shutdown if there were a COVID outbreak among its employees, it created two groups of employees that could perform the same tasks. Consequently, if one group of employees had to be quarantined, it could bring the second group to the site and, after sanitizing, continue its operations without significant interruption. This arrangement in its operations created intentional short-staffing in multiple areas of the operation. The Employer subsequently made changes to this initial COVID-19 “severe restrictions” protocol, but the record does not contain details of the new protocol, although they are no longer considered severe.

b. Employee job duties and functional integration: Membrane Manufacturing departments

1. Production Operations Department

i. Management of Change Procedure

The Employer has in place a protocol for considering and implementing a proposed change to any production process. The “management of change” (MOC) procedure is used to change production machinery, product recipes, and work instructions. It involves several steps: first, the change must be initiated, almost always by a process engineer or a supervisor; next, it enters a pre-implementation task phase, where preparatory work is done to assess the feasibility of the change and the steps that need to be taken to execute it; then, it moves through the implementation, post-implementation, and close-out phases. During the pre-implementation task phase, cross-functional teams are created. In the cross-functional team, employees in different classifications, such as quality control employees, operators, and engineers, all work together to provide input on tasks that need to be completed. Depending upon the scope and type of the task, those may be assigned to different groups, such as maintenance or a process-related group. Once the change to the process occurs, the employee who initiated it, likely a process engineer or an engineering specialist, trains the manufacturing operators about the change.

ii. Production group – Manufacturing Operators

The production group is separated into three divisions: two that produce fibers, and a third that creates the finished product, called a bundle order cartridge, containing the fibers. Each of the four supervisors has a designated area of responsibility: one in fabrication, one in MEDAL spin, one in IMS, and a new supervisor who is learning the fabrication area. There are 53 manufacturing

operators and 9 lead operators in the production group. As of the hearing date, production was running around the clock, seven days a week, with the operators working 12-hour shifts and a lead operator on every shift. The supervisors work Monday through Friday at various hours between 6:00 a.m. and 6:00 p.m.

The manufacturing operator's primary responsibility is to run the machines that manufacture the polymer gas separation membranes. Operators are assigned to either the IMS or the MEDAL process; although they are cross-trained in both processes, they move between the two infrequently. In manufacturing the product, they follow detailed work instructions and recipes for mixing the raw materials. After retrieving raw materials from storage, they prepare a liquid polymer solution that machines spin into hollow thread-like fibers. In the MEDAL process, once the fibers are made in the spinning operation, they are moved to machines that wind them onto bobbins, and those large bobbins of fiber are used to make the membrane bundles used in customers' applications. In IMS production, the fibers are put onto spools and then fed into machines called winders, and they are made into large bundles. In the machining area, operators manufacture tubular membranes of plastic, steel and aluminum to hold the fiber bundles. Operators also perform finishing and testing functions: they check the quality of the fiber under a microscope to ensure its shape is proper; they cap the bundles with oven-cured epoxy to provide stability; they measure the length of the bundles to ensure they meet specification; and they use a testing apparatus to make sure the product's performance meets expectations. Once the bundles pass all tests, they are moved to the warehouse for storage until they are packed and shipped by the warehouse employees.

For each step of the production process, operators are given run sheets, which are printed sheets with scanner codes for their jobs. Those sheets are prepared by the production planner in FileMaker software and distributed daily, either by email or by hand to a production supervisor or lead operator. After an operator completes a job, the operator scans the sheet with a handheld scanner, and the Employer's Oracle software system, used for tracking production and inventory, automatically updates to indicate that the operator's step of the production process is completed. The number of scans per production process varies considerably, from as few as a dozen to as many as about 200.

Each morning, operators in the MEDAL spin production area coordinate with QC lab technicians to determine when the operators will interrupt production – known as a cam change – so the lab technicians can obtain samples for testing. The operators and lab technicians together set up the equipment to allow the lab technicians to retrieve samples through a procedure called a drive roll. Thereafter, throughout the course of the day, operators regularly send samples of their solutions and process tanks to the QC department. Operators wait for lab technicians to confirm the samples meet specifications before they begin production. The operators also send finished product to the QC lab technicians for testing before sending it to fabrication to put it into bundles.

Throughout the production process, if manufacturing equipment fails to work properly, a lead operator or supervisor will call or submit a work order to either the maintenance group, the manufacturing technology group, or the I&A group, depending on the type of problem. When a product sample does not conform to specifications, the QC department notifies the process engineers, who will step out to the production floor to troubleshoot with the operator whether there

is something wrong with the production processes – the pressures, temperatures and flow rates – that needs to be addressed. For issues clearly related to instrumentation, the I&A group will be notified. In other instances, the source of the problem will not be obvious and so both groups, along with maintenance technicians, may get involved in a team effort to troubleshoot the issue. Operators have some limited ability to troubleshoot problems themselves, but only to the extent their work instructions provide guidance how to do it.

Manufacturing operators train process engineers how to run production on their equipment to give the engineers a better understanding of how the processes work. They also interact with each other when process engineers are developing improvements to the production process, working together for periods of time that can last for weeks or months. Operators may also work with the engineering technicians or engineering specialist, as one did recently when the operator and the engineering specialist worked together for two months readying a new piece of equipment in the spinning area to produce fiber.

iii. Facilities Maintenance group

The three maintenance technicians perform “industrial maintenance,” including preventive and corrective maintenance of mechanical and electrical equipment throughout the facility and grounds. Among other things, they maintain and repair HVAC equipment, boilers, air compressors, pumps, water systems, machine tools, mixing systems, and winding systems. They also perform basic mechanical tasks such as changing light bulbs and assembling furniture. According to their supervisor, they spend about 40 to 50 percent of their time on the production floor making sure the equipment is performing correctly. The maintenance technicians work five eight-hour shifts, from 7:00 a.m. to 3:30 p.m. Monday through Friday.

When there is a production issue, maintenance technicians may collaborate with the I&A technician or I&A specialist, or with the manufacturing technology group. First, they determine if there is a mechanical or electrical problem that they can repair themselves. If there is not, they will often contact the I&A group to see if the controls are the issue. In the course of troubleshooting production issues, the maintenance technicians interact with the I&A technician or I&A specialist from several times a week to several times a day, for periods ranging from several minutes to a half hour depending on the complexity of the problem. Both maintenance technicians and I&A employees have the skill to “go inside the machine” to attempt to diagnose an electrical issue. During these periods, the operators often will share information about the nature of the problem with the maintenance or I&A employees, and then return to the operator control room.

In other situations, process engineers will request help from a maintenance technician. If the engineer is troubleshooting a malfunctioning machine and suspects the problem is mechanical in nature, such as a failing pump, the engineer will ask a maintenance technician to look at the equipment, and they will work side by side to correct the issue. According to Manufacturing Technology Manager Poludniak, process engineers and maintenance technicians routinely work together in this manner. Requests for help from maintenance can

be made in person or through a work order submitted via the Employer's Mainsaver software program. Maintenance employees also worked together with an engineering technician when, during two or three plant shutdowns including one within the past year, the engineering technician performed routine maintenance work with them. The maintenance technicians have less contact with the engineering specialist, limited to occasional situations when he has them fabricate a part to support a process. Similarly, they interact with the design draftsman at most once every couple months, when they ask him to pull a drawing from his files to use in their work. Generally, they do not interact with the production planner or strategic specialist, the warehouse employees, or the QC lab technicians.

iv. Instrumentation and automation (I&A)/process control group

The I&A department¹¹ is responsible for the hardware and software related to process control, programming, and instrumentation in the production machinery; they ensure that the automated parts of the Employer's PLC-based¹² machines work correctly and that the production data being generated is accurate. When the facility installs new production equipment or upgrades existing equipment, the I&A employees also determine the instrumentation and design features needed.

The primary function of the I&A technician is to calibrate instruments throughout the facility. The employee currently in the position is a certified electrician who previously worked in the maintenance department, and as a result he continues to perform some electrical work in the facility together with the maintenance technicians. He also periodically performs maintenance work during nights or weekends. For example, when automated equipment is tripped by power fluctuations, he will go to the facility to reset the equipment or take care of any electrical or maintenance issues related to it. Sometime after he had already started in the position of I&A technician, he was sent to training to bring his skill set more in line with those of the I&A engineer and specialist, but the record does not disclose any details about the dates, nature, or duration of the training.

The I&A engineer and I&A specialist are responsible for troubleshooting automated equipment and machinery throughout the production operation, and for programming newly acquired or upgraded automated equipment. In general, they perform the same work, although only the I&A engineer has an engineering degree. Both employees work with operators and process engineers to understand either the nature of a malfunction, or, in the case of new or upgraded equipment, the automated functionality needed in order to program the equipment. With regard to the latter, the I&A specialist recently collaborated with an operator and the engineering specialist to upgrade production equipment by determining the necessary instrumentation for the upgrade. When operators encounter problems with

¹¹ Neither the manager of the I&A employees nor any I&A employee testified at the hearing. As a result, there was no witness with best knowledge of the work performed by these classifications.

¹² A PLC, or programmable logic controller, is an industrial computer used to automate customized control processes in manufacturing.

machines that are obviously related to automation, as for example when the pressure in a process fails to reach the proper level, they report them to the I&A group. Because the I&A employees need to troubleshoot the problem, they will speak with the operator to learn the nature of the malfunction, including any information the operator received about it from the OPTIM system through the HMI, or human-machine interface. I&A employees generally do not interact with lab technicians or warehouse employees.

2. Quality Control (QC) Lab Department

The QC lab technicians test an array of fibers and raw materials obtained from the production floor to ensure the fibers meet required specifications. Because each type of fiber is tested in a different manner, the lab technicians rotate among different positions in the department to become cross-trained in testing all types of fibers. QC Supervisor Imperial logs the technicians' rotations among the facility's five labs, and she shares that log with the lead lab technician who makes lab assignments.

As noted above, QC lab technicians have frequent contact with operators: they go to the MEDAL spin side daily to coordinate with operators as to when they can obtain samples, and operators regularly send samples to the QC department throughout the day. QC lab technicians also interact with employees in the manufacturing technology department. They assist process engineers by testing material samples during the development of a new process, and, because the engineers are trained to operate some of the lab equipment, they may run tests together, or the process engineers may themselves run the samples if no lab technician is available. When new lab equipment is installed, lab technicians sometimes receive training on its use from process engineers.

3. Manufacturing Technology Department

The manufacturing technology group is primarily responsible for maintaining the instrumentation and programming of the equipment and processes, known as the "technology platform." Every day, the engineering staff in this group monitor the "health" of the equipment, including the pressures, temperatures, and flow rates, to ensure they are running within their specifications. When a process is not working according to specifications, they troubleshoot and work to repair it. They also work to develop new processes to improve production. The group develops and maintains the chemical recipes used to make fibers, and creates the work instructions for the various production processes. Although both this group and the I&A group work with technology, the manufacturing technology group targets problems and devises improvements with machinery, whereas the I&A group deals only with issues related to software and automation.

There are five process engineers, three engineering technicians, an engineering specialist and a design draftsman in the manufacturing technology department at the Newport facility. Of these, two process engineers, two engineering technicians and the design draftsman report directly to Senior Manager Poludniak; two process engineers and an engineering specialist report to MEDAL Manager Rutledge; and one process engineer and one engineering technician report to IMS

Manager Ray.

The process engineers are each responsible for troubleshooting and improving the production processes in a specific production area, where they spend approximately 40 percent of their time. The three who report to Ray and Rutledge are primarily concerned with process-related parameters such as temperature, pressure, and concentration, whereas the two directly under Poludniak deal with mechanical functions. Process engineers initially spend several weeks watching manufacturing operators perform their work and helping the operators make product so they can gain an understanding of the processes in their assigned areas. Thereafter, they work to develop new or improved processes, which frequently requires them to be on the production floor with the equipment and to gather information from operators. They also troubleshoot malfunctioning equipment: for a line that has frequent shutdowns, for example, the process engineer might identify where the installation of new pumps could help avoid them, and then guide the maintenance team as they replace the pumps. Once a process engineer has implemented a new process or changed an existing one, they create instructions for the operators to follow in production. They also routinely interact with lab technicians as they test product samples; they will either deliver the samples to lab technicians for testing, or, because they have been trained to use some of the testing equipment, they will perform the tests themselves when a lab technician is unavailable. When a process engineer needs to run a fiber bundle for testing, the engineer asks the production planner to generate a work order for the bundle. The engineer and production planner also work together to prepare run sheets for each test run. Additionally, the process engineer will collaborate with the I&A group on the programming and control modifications needed for new or altered equipment. Because they have many office-related tasks, including documenting the work they perform, they also spend a significant amount of time in their offices in Building 200. All of the process engineers have an engineering degree.

The first process engineer is responsible for production operations in Buildings 300 and 700. As of the hearing date, she was working to expand output capacity in Building 700's post-treatment area using a new process involving a silicone solution. As part of that project, she worked with a manufacturing operator who ran the equipment under her guidance so she could develop new work instructions. Throughout the summer of 2020, she worked with lab technicians to identify the source of bacterial growth in a bore solution. The second process engineer is responsible for the small bundles area in Building 100. Recently, she worked with the packing coordinator and the packaging engineer to develop a modification to the manner in which a customer's product was readied for shipping; while the other two focused on the packaging of the product, she developed a change to how the product was manufactured to accommodate the packaging change. The third process engineer spends most of his time in Building 700, working on IMS fiber production and post-treatment equipment related to temperature, pressure, and concentration. During the COVID-19 pandemic, he sometimes worked as an operator when the Employer was short-staffed, focusing on the task of extricating broken or tangled fibers from inside a vertical tower used to coat them. The fourth and fifth process engineers are responsible for maintaining large mechanical equipment. One of them is assigned to the winding area, where he recently watched a lead operator machining a product from start to finish so he could pinpoint why the product had a fifty percent failure rate. In light of his training on the equipment, the engineer occasionally

worked as an operator on the winding equipment during the short-staffing period of the pandemic. The other process engineer serves as a packaging engineer, responsible for devising packaging methods to satisfy customer requirements and for preparing work instructions so warehouse employees can properly implement those methods. In the course of preparing instructions, the engineer may collaborate with the packing coordinator in the warehouse as he did recently in the manner described above.

The engineering specialist performs duties similar to the process engineers, working with the production processes in the small bundle group in Building 100 and the MEDAL platform in Buildings 300 and 500. According to Senior Director Gadre, the specialist spends nearly all of his work time on the production floor interacting with operators, maintenance technicians, two of the process engineers, and the I&A group. Recently, the specialist was tasked with preparing equipment so that a development spin unit could be repurposed to make production-ready fiber. He spent two months working side by side with an operator for most of his work week, upgrading the equipment and getting the fiber qualified for use, and he continued to work with the operator after that to fine tune the equipment. In the course of that effort, the I&A specialist worked with them to determine the instrumentation needed for the modified equipment. Throughout the process, both the engineering specialist and the operator also worked with the production planner, who created work orders for the production of fiber samples to be tested. The engineering specialist previously worked as a non-exempt technician in the research and development unit, ultimately moving into the exempt specialist position in April 2020. Unlike the process engineers, he does not have an engineering degree.

The main function of the engineering technicians is to maintain, diagnose and repair equipment. All three of them previously worked for years as manufacturing operators, and one of them worked for a brief period as a lab technician. As engineering technicians, each has discrete areas of responsibility. The first engineering technician has two duties: he troubleshoots defective membrane bundles, and he handles outside contractors when they are present at the Newport facility. With respect to the first, when a bundle does not perform as expected, the customer is asked to return the product to the Employer. The returned product is delivered to the engineering technician, who runs diagnostic tests to determine what caused the malfunction. He then provides feedback to other groups to determine what mitigation steps should be taken. He also periodically performs a leak repair procedure on bundles found to be defective during post-production testing, a task normally performed by an operator; he performs the task when an operator is on vacation or otherwise unavailable, using the same equipment the operator would. The engineering technician developed that repair procedure in 2019 in collaboration with an operator and a supervisor. With respect to his second duty of handling visiting contractors, he is responsible for all related documentation and for overseeing the contractor's work. For the past five years, the technician also has worked in the warehouse with the warehouse employees throughout December to prepare and ship products by the end of the year. During periods of short staffing caused by the pandemic, he worked as an operator. The second engineering technician is responsible for cleaning and maintaining the spinnerets used on the production floor. He retrieves them from the production area and then takes them to his work area in Building 100 to perform maintenance or repairs. About 70 percent of his time is spent working on the spinnerets; the remaining 30 percent is spent on the production floor interacting with operators by evaluating the spinnerets and

verifying they are working, assisting with installing them, or troubleshooting issues with them. The third engineering technician is responsible for troubleshooting mechanical problems in small components of the MEDAL and IMS production equipment, such as pumps or spinnerets, and fixing them if he is able. He also fills in for the engineering technician who maintains the spinnerets, and he assists one of the process engineers in changing or adding water pumps to machinery. When he is addressing an issue that requires replacement of compressors or pumps and he cannot do the job himself, he will work with the maintenance team as they install those components. If he is troubleshooting and determines that there is a process control and programming issue, he involves the I&A employees, and he interacts with the operators in upgrading or repairing the winders or receiving feedback about issues they encounter during production. As noted, the technician worked with the maintenance group performing annual preventative maintenance during two or three plant shutdowns, including one just a few weeks before the hearing. More recently, he assisted a maintenance technician with a repair to the green spinning line in the IMS production area.

Finally, the design draftsman is responsible for creating and maintaining a repository of engineering drawings of production equipment and other processes. Those drawings document changes in equipment or the development of new products. When employees in the maintenance and manufacturing technology groups need machine drawings to repair or improve equipment, they get them from the design draftsman. Similarly, the production planner obtains drawings from him and coordinates with him for purchasing and procurement planning, and he will provide drawings to warehouse employees that show how certain products should be packaged, as he did recently for a large shipment of bundles. The design draftsman previously worked for many years as an operator in multiple areas, and he continues to perform the operator function of running test skids when the operator is unavailable, which he has done numerous times both before and during the pandemic. He will also help to troubleshoot problems with equipment. The design draftsman does not possess an engineering degree and the record contains no evidence that he has any specialized training or skills other than AutoCAD proficiency.

4. Planning and Procurement Department

i. Production planner

The production planner reports directly to Senior Manager Kraucunas, who is responsible for planning the Employer's annual production needs. Working from an office in a temporary trailer south of Building 800, the production planner uses Kraucunas' master production plan to plan and coordinate the daily production workflow to meet the master plan's requirements. The production planner prepares documents corresponding to jobs that the operators must fulfill each day and she distributes them to the operators, either by email or by giving paper copies to a lead operator or supervisor to deliver in person. Each job has a serial number that the operator scans with a handheld device once the job is completed, which permits the production planner to track completed jobs in the Oracle software program.

When an operator encounters a problem scanning a job to the Oracle system, the production

planner is responsible for troubleshooting the issue. She is notified of the problem either through an error message sent by auto-generated email, or directly from the operator by text, email, or in person. When she learns of the problem by auto-generated email, as she does with about 25 to 30 percent of the scanning issues, the email may provide her with sufficient information to permit her to diagnose the problem and fix it in Oracle. If it does not, she will speak to the operator to try to determine what the issue is. She also interacts with operators when production is down for any reason, checking in with them on the status of the shutdown so she can assess the impact on the production schedule. Kraucunas estimated that the production planner spends about three hours each workday on the production floor monitoring adherence to the production schedule and addressing issues such as scanning errors, interacting with operators and lead operators in the process. The production planner also prepares lists of products to be shipped to each client, and those lists are used by the warehouse employees, primarily the packing coordinator, to pack shipments. If the packing coordinator has questions about shipments, he can address those to the production planner, typically through the Google instant messaging system.

ii. Strategic Inventory and Supply Chain Specialist

The strategic inventory and supply chain specialist (strategic specialist) is a newly created position that reports to the supply chain and materials manager.¹³ She has two areas of responsibility: warehouse organization, and Oracle software system improvements. With respect to the first, she is tasked with improving the layout of the warehouse to increase the efficiency of material flow. As a new hire, she works closely with the warehouse supervisor and warehouse employees to learn about the warehouse's current functioning. One way she has done that is by conducting time studies with different warehouse employees as they perform tasks like packing product or retrieving it from storage. All told, she spends a few hours each workday in the warehouse assessing conditions. After she concludes the initial reorganization of the warehouse, she is expected to continue working to optimize its flow in order to increase its efficiency. With respect to the Oracle improvements, her assignment is to help correct inefficiencies with the system's implementation, such as the failure of data entry to populate or delays in devices' response time. To do this, she will first gather information from manufacturing operators about problems they encounter with Oracle, and then she will communicate those issues to the Employer's dedicated software support group in Houston. Essentially, she will serve as an Oracle liaison between the operators and the software support group. While the Employer plans to place the strategic specialist closer to the warehouse and production areas, as of the hearing date she worked in an office in Building 200.

iii. Warehouse

Overseen by warehouse supervisor Scott Mahoney, warehouse employees are responsible for shipping, receiving, packaging and inventory control. Three employees work in this area: a packing coordinator, a materials coordinator, and a shipping coordinator. The warehouse employees receive all shipments to the facility, including raw materials used in

¹³ There are two other classifications that report directly to the supply chain and materials manager, a material and inventory control specialist and a buyer, but neither is at issue.

the production process. Following delivery, raw materials are stored in either Building 800, which houses the shipping and receiving areas and the warehouse, or Building 400, which provides storage for materials to be used for production in Building 300. When membrane bundles are finished, tested and ready for shipment, they are packed in the 800 building in accordance with customer requirements and then shipped. As described above, the packing coordinator will work with process engineers as needed on customer-requested modifications to packaging, and all three warehouse employees work with one of the engineering technicians during the month of December on year-end shipping.

II. Team Leads' Duties and Responsibilities Within the Employer's Operation

a. Lead manufacturing operators

As noted, there are nine lead manufacturing operators in the production group. Much like production supervisors, each lead operator is assigned to a designated area based on the employee's expertise. There is a lead operator working during every shift, and on nights and the weekend they are often the highest-ranking production employee at the Newport facility. All of the current lead operators previously worked as operators, receiving a pay increase when they became leads and move from grade 7 to 8.

Lead operators take directions from production supervisors or the production planner regarding production priorities, and they are expected to adhere to the production schedule. If an intervening event, such as malfunctioning equipment or a shortage of raw materials, prevents them from maintaining the production schedule, they notify the supervisor or the production planner about the problem so they can make necessary adjustments. Operators make recommendations to supervisors on the distribution of work among operators to meet production goals. If there is a deficit in manufacturing operators' performance, the supervisor will either talk directly to operators about working to meet the production goals, or ask the lead to talk to them. The record does not indicate whether failure to meet production goals has consequences for lead operators.

Lead operators have some authority to transfer operators from different areas within the department to help meet production demand. For example, if an operator in the IMS spin area is absent from work, the lead operator, who oversees both the MEDAL and IMS platforms for the spin operation, can move an operator from the MEDAL area to the IMS area for the shift. When an operator calls off from work, the lead will inform the supervisor and then will call other operators to see if anyone is available to cover the absence. Broccoli testified that leads can call operators to ask them to work in order to catch up with production and then notify the supervisor after the fact; when asked for examples of this, however, he could not provide any specific instances. An email introduced into evidence by the Employer appears to contradict that leads have such authority: in it, a lead operator requested Broccoli's authorization to allow an employee to come to work earlier than his regular start time because there was a work backlog. Lead operators have no authority to grant time off; leave days are requested electronically by employees through a time management system.

The lead operators bear primary responsibility for training new operators, although other experienced operators can train them, too. When either a lead operator or an operator trains an employee, they complete a checklist of performance objectives or benchmarks. For each item, they mark whether the operator is performing the objective correctly or incorrectly, and then certify that the employee can perform the job. Leads also report the number of hours of training a new operator has received, and whether they believe the new operator needs more training. Because leads train the operators, they know which employees have become skilled in a particular area of the job. As a result of that knowledge, leads may recommend to supervisors, for scheduling purposes, where to place an operator based on the employee's skill set. Leads also remind operators of the Employer's policies, such as production standards and requirements to use personal protective equipment or check the log sheet.

A lead operator can recommend employees for hire, but any operator can do the same. There is a multi-step process for hiring in the production department. Apart from the requirement that Senior Director Gadre approve any job posting, all steps of the process are confined to the human resources department, which screens resumes, ranks candidates, and conducts initial phone interviews. Lead operators do not participate in job interviews of applicants.

Lead operators have no authority to discipline, suspend or terminate employees. If they observe that an operator is underperforming, they can report the issue to the supervisor and make a recommendation, but there is no record evidence as to the weight given to that recommendation. For instance, Broccoli testified about one situation in which a lead recommended to his supervisor that he send an operator home because he was not performing his duties, but Broccoli provided no further detail as to what, if anything, happened as a result. On occasion, supervisors ask leads to keep an eye on underperformers and help them in their duties.

The Employer submitted a series of emails from four lead operators purporting to show their supervisory duties, but none of them showed that the lead operator involved possessed any indicia of supervisory status.

b. Lead QC lab technician

There is one lead QC lab technician who, like the other lab technicians, is supervised by QC Lab Supervisor Imperial. In addition to performing the same lab duties as other technicians, the lead monitors the progress of his fellow lab technicians, highlights areas of concern to them, and assigns them different lab rotations so that everyone is cross-trained to the extent possible in the five labs' procedures. Additionally, Imperial seeks feedback from the lead regarding other lab technicians' performance, and she includes him in lab technicians' performance review meetings. While the lead can request a lab technician to report to work earlier than scheduled if needed, the lead must first obtain prior approval from Imperial.

Imperial also includes the lead lab technician in job interviews with her and seeks his feedback about the best candidate, as she did in January 2020 with several interviews. During those interviews, the lead described the QC department's work, and at their conclusion, the lead gave the candidate a tour of the facilities.

In 2016, the lead played a limited reporting role in a lab technician's termination. While training the employee, the lead took notes detailing the employee's errors and other difficulties. Imperial used both the lead's notes and her own to raise the issue with the human resources department, which then decided to terminate the employee.

The lead also was involved in an employee performance reward program Imperial had in place before the pandemic. Under the program, employees could earn points used to purchase items from a catalogue; the lead would email Imperial when an employee worked beyond what was expected, asking her to award points to the employee. Under this system, however, lab technicians could also recommend that their co-workers receive points for exceptional performance.

III. Wages and Conditions of Employment, Skills and Qualifications

a. Job Qualifications

Among the petitioned-for classifications, all require a high school diploma or GED except for manufacturing operator, which merely prefers one of those. Additionally, the following are classification-specific requirements or preferences according to their job descriptions: (1) an entry-level manufacturing operator must have 2-3 years' experience in an industrial environment with knowledge of machines, tools and computer operation; (2) a maintenance technician must have at least five years of documented industrial maintenance experience, and computer competency; (3) a QC lab technician must have at least two years of manufacturing experience, mechanical aptitude, and computer skills; and (4) a materials coordinator¹⁴ must have at least two years of inventory control experience, experience using enterprise and other software, and forklift experience. Both manufacturing operator and QC lab technician also have lifting requirements.

Among the classifications the Employer seeks to add to the unit, only the process engineer and strategic inventory and supply chain specialist must, according to their job descriptions, have a bachelor's degree. It appears, however, that the current strategic inventory and supply chain specialist does not have a bachelor's degree, and Senior Director Gadre testified that the position does not require a bachelor's degree.

Process engineers are required to have a bachelor's degree in mechanical engineering or comparable program, and proficiency with database, spreadsheets, and other computer software programs. The record does not specify the qualification requirements for engineering specialist; while the current engineering specialist does not have an engineering degree, he does have experience working for the Employer as a technician in its R&D division and in its advanced technology solutions group. Engineering technicians must have a high school diploma or GED, mechanical aptitude, two years of manufacturing experience, and good computer skills. The design

¹⁴ The Employer did not provide separate job descriptions for shipping and packing coordinators, although I note that the job description for materials coordinator states that the employee "may be involved in the process of packaging, extracting and loading the material to be transported", and includes among its listed duties the preparation of outgoing shipments.

draftsman must be proficient in AutoCAD software and experienced with Microsoft Office and Google platform, and possess either an Associate of Applied Science degree in drafting and design technology or have a combination of education and experience. The person currently in the position was formerly an operator; the record discloses no evidence of formal education.

The I&A engineer must have familiarity with certain instrumentation, three years of experience in industrial process automation, strong troubleshooting skills, and problem-solving capability. The person currently in this position has an engineering degree, although the job description does not require one. The I&A specialist must have experience in industrial process automation and instrumentation and maintaining process control systems and be familiar with certain software. The Employer prefers but does not require an associate degree in engineering technology or related discipline. The I&A technician must have three years of hands-on experience in instrumentation, and experience maintaining and troubleshooting process control systems.

The job description for strategic specialist states that the candidate must have a bachelor's degree, three years of professional experience, and strong computer, analytical and customer service skills. However, Senior Director Gadre testified that he did not think the employee in the position has a college degree, and that it is not a requirement for the position. The production planner must have either a bachelor's degree or three years of relevant experience, and experience using planning and scheduling systems and databases. There is no record evidence whether the production planner has a bachelor's degree.

b. Work hours

Within the petitioned-for unit, the employees work a broad range of hours. As of the date of the hearing, manufacturing operators were working 12-hour shifts, either 6:00 am to 6:00 pm, or 6:00 pm to 6:00 am.; maintenance technicians work Monday through Friday from 7:00 a.m. to 3:30 p.m.; and quality control lab technicians work one of two shifts, either 6:00 a.m. to 2:30 p.m., or 2:30 p.m. to 11:00 p.m. There is no record evidence as to the work hours of the warehouse employees. Because their work requires them to have their hands on either the product or the machinery, all of the employees in the petitioned-for classifications must work at the plant.

Among the employees the Employer seeks to include in the unit, all appear to work day-shift hours. The engineering specialist and engineering technicians work four 10-hour days per week, but the specific work hours, if any, were not discussed in the record. The engineering technicians work exclusively at the plant. Process engineers and the design draftsman work five days weekly, with one telework day per week.

There is no record evidence as to the hours of the I&A technician, I&A engineer and I&A specialist, the strategic inventory and supply chain specialist, and the production planner.

c. Wages

The Employer's wage system is based on grades. Each grade has a wage range per hour, set forth below, although employees in grades 9 and 10 are salaried employees.

Grade	6	7	8	9	10
Wage Range	\$20.00 to \$25.40	\$24.81 to \$33.56	\$31.72 to \$39.01	\$36.06 to \$44.71	\$46.06 to \$47.30

All of the employees in the petitioned-for unit are paid hourly and are non-exempt. Manufacturing operators and QC lab technicians are grade 6 or 7, depending on their level of experience; leads in both classifications are grade 8. Maintenance technicians and materials, shipping, and packing coordinators are grade 7.

Among the classifications the Employer seeks to add, four of them – engineering technician, I&A technician, I&A specialist, and design draftsman – are non-exempt hourly employees. Four others are salary exempt: process engineer, I&A engineer, production planner, and engineering specialist. Engineering technician is grade 7¹⁵; design draftsman is grade 8; process engineer, I&A engineer, I&A technician, strategic inventory and supply chain specialist, and production planner are grade 9, and engineering specialist and I&A specialist are grade 10.

d. Benefits and other Terms and Conditions of Employment

All employees are subject to the same employer policies, including code of conduct, discipline, attendance, use of company bulletin boards, non-harassment, smoke-free workplace, solicitation and distribution, and workplace violence. The Employer also offers the same benefits package to all of its employees, including medical insurance with pharmacy, vision and dental coverage, life and disability insurances, paid parental leave, funeral and bereavement leave, holidays and floating holidays, vacations, and paid personal time.

The Employer makes uniforms available to all employees, but it does not mandate that they be worn. All employees on the production floor are required to wear safety glasses and safety shoes. In addition to those two items, laboratory technicians also wear lab coats. All employees share a common parking lot, cafeteria, and breakrooms.¹⁶

B. Analysis

I. Appropriate Unit

Petitioner is not required to seek a bargaining unit that is the only appropriate unit or even the most appropriate unit. The Act merely requires that the unit sought by Petitioner be *an* appropriate unit. *Wheeling Island Gaming*, 355 NLRB 637, fn. 2 (2010), citing *Overnite Transp. Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988). “The Board’s inquiry necessarily begins with the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends.” *The Boeing Company*, 368 NLRB No. 67, slip op. at 3 (2019).

¹⁵ Although listed as a manufacturing technician in Employer Exhibit 28, it appears that that term is used interchangeably with engineering technician, a conclusion supported by testimony as well as the absence of “engineering technician” as a classification on that same exhibit.

¹⁶ The record does not reflect the number of breakrooms in the facility.

In *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), the Board returned to the traditional community-of-interest standards for determining whether a unit is appropriate. There, the Board specifically found that the traditional community-of-interest test is the “correct standard for determining whether a proposed bargaining unit constitutes an appropriate unit for collective bargaining when the employer contends that the smallest appropriate unit must include additional employees.” *Id.*, slip op. at 1. In each case, the Board is required to determine:

whether the employees are organized into a separate departments; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Id., slip op. at 11, citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002). The Board must analyze “whether employees in the proposed unit share a community of interest *sufficiently distinct* from the interests of employees excluded from the unit to warrant a separate bargaining unit.” *Ibid.* (emphasis in original). The purpose of the inquiry is to ensure, among other things,

that bargaining units will not be arbitrary, irrational, or “fractured”—that is, composed of a gerrymandered grouping of employees whose interests are insufficiently distinct from those of other employees to constitute that grouping a separate appropriate unit

PCC Structural, supra, slip op. at 5.

The Board has clarified that the traditional community-of-interest test, as articulated in *PCC Structural*, involves a three-step analysis.

First, the proposed unit must share an internal community of interest. Second, the interests of those within the proposed unit and the shared and distinct interests of those excluded from that unit must be comparatively analyzed and weighed. Third, consideration must be given to the Board’s decisions on appropriate units in the particular industry involved.

The Boeing Company, supra, slip op. at 3. With respect to the first step, “the traditional community-of-interest standard is not satisfied if the interests shared by the petitioned-for-employees are too disparate to form a community of interest within the petitioned-for unit.” *Ibid.*, citing *Saks & Co.*, 204 NLRB 24, 25 (1973); *Publix Super Markets, Inc.*, 343 NLRB 1023, 1027 (2004). In step two of the analysis, “the Board must determine whether the employees excluded from the unit ‘have meaningfully distinct interests in the context of collective-bargaining that *outweigh* similarities with unit members.’” *The Boeing Company, supra*, slip op. at 4, quoting *PCC Structural, supra*, slip op. at 11. “[W]hat is required is that the Board analyze the distinct and similar interests and explain why, taken as a whole, they do or do not support the appropriateness of the unit.” *Ibid.*

A. Application of Board Law to the Facts

Applying the Board's traditional community-of-interest test, I find, for the following reasons, that the petitioned-for classifications do not share a community of interest sufficiently distinct from the interests of the disputed classifications to permit their own separate unit. Accordingly, I find that the smallest appropriate unit in this case must include all of the excluded classifications.

i. Step one of the Board's analysis: shared interests within the petitioned-for unit.

To begin, I find that the production operators, maintenance technicians, QC lab technicians and warehouse employees share an internal community of interest as required by step one of the Board's analysis. The job duties of those classifications are integral to the production process of the Employer's gas membranes; the employees in those classifications handle either the product or the machinery in which it is made. Manufacturing operators run the machines that manufacture the Employer's product and perform some testing on the product. QC lab technicians perform functions critical to the production process by testing the product frequently throughout the day. Maintenance mechanics spend significant amounts of their workday in the production area, performing mechanical and electrical repairs to the machinery that produces the product. And the warehouse employees receive, transport and store the raw materials used in the manufacturing of the Employer's membranes and they package and ship the finished product. Thus, there is functional integration among all of the classifications, and regular daily contact between the operators and both the maintenance technicians and lab technicians. Given the nature of their duties, the employees in the four classifications must be present at the facility to perform their work. They are paid hourly, with all non-lead employees in these positions at either a grade 6 or 7, earning from \$20.00 to \$33.56 per hour depending on experience, and the lead operators and lead lab technician at grade 8, earning between \$31.72 and \$39.01 hourly, a range that overlaps with grade 7 wages. For all four classifications, the Employer requires or prefers a high school degree or equivalent, relevant experience of two to five years, and some computer skills.

Based on the above, I find that the manufacturing operators, maintenance technicians, QC lab technicians, and warehouse employees share an internal community of interest.

ii. Step two of the Board's analysis: shared interests between the petitioned-for unit and the classifications the Employer seeks to add.

Although the petitioned-for employees share an internal community of interest, I find that it is not sufficiently distinct in the context of collective bargaining from the interests of the contested classifications to justify the exclusion of the employees the Employer seeks to include.

a) Common departmental organization and common supervision.

As detailed above, none of the classifications in the petitioned-for unit share common direct supervision, and only two of them – manufacturing operators and maintenance technicians – are

organized by the Employer in the same department. However, three of the four petitioned-for classifications are organized by the Employer to share departments and supervision with four of the excluded classifications. First, the manufacturing operators and maintenance technicians reside in the Production Operations department alongside the I&A technician, I&A specialist and I&A engineer, where they share common second- or third-level supervision under Director of Operations Rahman. And second, the warehouse employees are in the Planning and Procurement Department with both the strategic inventory and supply chain specialist and the production planner, where they all fall under the supervision of Manager Kraucunus, either directly or at the second level. On the other hand, the four classifications in the Manufacturing Technology Department – engineering specialist, process engineer, engineering technician and design draftsman – do not share common departmental organization or supervision with any petitioned-for classifications. Accordingly, I find that these two factors weigh in favor of finding that the classifications of I&A technician, I&A specialist, I&A engineer, strategic inventory and supply chain specialist, and production planner share a general community of interest with the petitioned-for classifications, but weigh against that finding with respect to the manufacturing technology classifications.

b) *Distinct skills and training.*

This factor examines whether disputed employees can be distinguished from petitioned-for employees based on duties or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in the unit. Evidence that disputed employees must meet similar requirements to obtain employment, that they have similar job descriptions, that they receive similar employer training, or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB 603, 604-05 (2007); *J.C. Penny Co., Inc.*, 328 NLRB 766 (1999); *Brand Precision Serv.*, 313 NLRB 657 (1994).

There is a range of required skills and training among the various classifications, but also significant overlap among some of them. All of the positions require prior relevant experience, on-the-job training, and varying levels of computer skills. Manufacturing operators, warehouse employees, and lab technicians must follow detailed written instructions in carrying out their assigned tasks, however, so their work is more routine than the other classifications. Maintenance technicians, engineering technicians, and I&A employees require a deeper knowledge of how the manufacturing equipment functions to permit them to troubleshoot issues, a key aspect of their jobs, and to repair or program the equipment, and must have mechanical skills to perform their work. The design draftsman must have computer drafting skills, but apparently no prior work experience or training; although the job description for design draftsman requires either an associate degree or a combination of education and experience, the person currently in the position previously worked as a manufacturing operator. Process engineers are required to have a bachelor's degree in engineering and considerable skill and judgment because they devise new methods for improving the manufacturing process by adding or modifying equipment to increase its efficiency. The engineering specialist job description contains no requirements for hire, but the person currently in that position previously worked as a technician for the Employer. He does not have an engineering degree; the record does not disclose whether he has a different degree. Since he performs work similar to the process engineers, I infer that he possesses an equally advanced

skill set. Finally, the production planner and strategic specialist both must have experience in their respective areas of work, but there is no evidence that either requires a college degree.

Based on the foregoing, I find that these factors weigh in favor of finding that the classifications of I&A technician, I&A specialist, I&A engineer, and engineering technician share a general community of interest with the petitioned-for classifications, specifically the maintenance technician, and weigh against that finding with respect to the classifications of strategic inventory and supply chain specialist, production planner, process engineer, engineering specialist, and design draftsman.

c) Distinct job functions.

This factor examines whether the disputed employees can be distinguished from one another based on job functions. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that disputed employees work together as a crew, support a finding of similarity of functions. *Casino Aztar*, supra.

As described in detail above, each of the petitioned-for classifications generally plays a distinct role in the gas membrane production process, with little or no overlap among them as to their duties. Manufacturing operators are largely tasked with operating the machines that manufacture the membranes; QC lab technicians are primarily responsible for testing product; maintenance technicians maintain, troubleshoot and repair the mechanical elements of the manufacturing equipment; and warehouse employees receive and store raw materials as they enter the facility and handle the finished product as it is packaged and shipped.

Certain of the excluded classifications, on the other hand, have duties that overlap to varying degrees with those of petitioned-for classifications. The engineering technicians, the I&A technician, the I&A specialist, and the I&A engineer, like the maintenance technicians, spend the majority of their time maintaining, troubleshooting and repairing production equipment. The only apparent distinctions are that the excluded group's tasks are more specialized than those of the maintenance technicians, and the I&A specialist and the I&A engineer also provide input on instrumentation needed when equipment is modified or new equipment is installed.

Process engineers, on the other hand, chiefly work on devising methods to improve production, whether by implementing new processes or by modifying existing ones, a unique function among all the classifications. They also spend significant amounts of their workday in their offices, preparing documentation to support the work they are doing. At the same time, like the lab technicians they are trained to use certain lab equipment, and they will run tests on product when lab technicians are unavailable. The engineering specialist performs work similar to that of the process engineers when they are on the production floor, but unlike them, the specialist spends nearly all of his workday on the production floor.

The design draftsman, production planner, and strategic specialist all have job functions that are not shared by any other classification.

I find that these factors weigh in favor of finding that the classifications of engineering technician, I&A technician, I&A specialist, and I&A engineer share a community of interest with the petitioned-for classifications, but weigh against that finding with respect to strategic inventory and supply chain specialist, production planner, process engineer, engineering specialist, and design draftsman.

d) Functional integration and employee contact.

The record disclosed significant evidence of functional integration and employee contact for each of the contested classifications with at least some of the petitioned-for classifications. Functional integration exists when employees work on different phases of the same product or a single service as a group. *Arvey Corp.*, 170 NLRB 35 (1968); *Transerv Systems, Inc.*, 311 NLRB 766, 766 (1993). Another example of functional integration is when the Employer's workflow involves all employees in the sought-after unit. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Ibid.*

While the petitioned-for classifications all play significant roles in the production process, the excluded classifications are similarly tasked with supporting and facilitating that process in integral respects. The manufacturing technology and I&A employees are responsible for maintaining the manufacturing equipment just as the maintenance technicians are. They also work to improve the production processes by modifying or adding equipment, and process engineers create the product recipes and work instructions used by operators and by warehouse employees, lending key support to both the operators and warehouse employees to accomplish their work. The production planner supports the manufacturing operators in two respects: she provides them with the run sheets they will use to keep production on schedule and otherwise monitors the progress of production, and she regularly assists them with issues with the Oracle system. See *AIL, A Division of Cutler-Hammer, Inc.*, 214 NLRB 203 (1974)(planners share a community of interest with employees in a production and maintenance unit because they perform work intimately related to the production process and spend substantial amounts of time in plant areas). Similarly, the strategic specialist is working to enhance the efficiency of the warehouse employees' work, and she will be providing support to the manufacturing operators as she serves as the Oracle liaison with the IT support group. The design draftsman contributes to improving production processes by documenting changes under the MOC procedure in his drawings and by providing maintenance and warehouse employees with the drawings they need to perform their work. And a number of other classifications likewise collaborate to make changes pursuant to the MOC procedure.

There are also numerous examples of regular contact between petitioned-for classifications and excluded ones. Both the I&A group and the manufacturing technology group work alongside or in collaboration with the maintenance technicians, and with the input and sometimes the assistance of the manufacturing operators. The process engineers interact with lab technicians and

will work beside them as they test samples while running production lines, and the lab technicians in return notify the process engineers when their samples fail tests. Manufacturing operators initially train process engineers how to run production equipment, and process engineers train operators and lab technicians when new equipment is installed. There is also contact when employees in the excluded classifications periodically perform the work of employees in petitioned-for classifications.

Based on the foregoing, I find overwhelming evidence of functional integration and frequent contact, and therefore find that these factors weigh heavily in favor of finding that the petitioned-for employees share a community of interest with the excluded employees.

e) Employee interchange.

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange “may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills.” *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). Also relevant for consideration of interchangeability is whether there are permanent transfers among the included and disputed classifications, although those are given less weight than evidence of temporary interchange. *Ibid.*

There is some evidence of employee interchange among certain classifications, most notably that of engineering technician. One engineering technician has worked with warehouse employees every December for five years to prepare and ship product by year’s end, and he fills in for a particular manufacturing operator when the operator is absent by repairing defective bundles sent back by customers. Another engineering technician performed maintenance technician work two or three times during weeklong plant shutdowns. The I&A technician, who previously worked as a maintenance technician, continues to perform some maintenance work on an ad hoc basis, particularly on nights and weekends. And the design draftsman, a former manufacturing operator, has filled in for an operator to run test skids numerous times both before and during the pandemic restrictions, as well as continued to troubleshoot equipment problems on occasion using his prior operator experience. Other employees, including process engineers and engineering technicians, performed operator work during the COVID pandemic when the Employer was operating on a restricted schedule, although there is no record evidence they continued to do so after the schedule was lifted.

There is also significant evidence of permanent interchange for the engineering technician classification, as all of the employees currently in that position previously worked as operators, and one worked briefly as a lab technician. The design draftsman also worked as an operator before assuming his current position, and the I&A technician previously worked as a maintenance technician.

Based on the above, I find that the existence of some employee interchange between the classifications weighs in favor of finding that the petitioned-for classifications share a community of interest with the engineering technician, I&A technician and design draftsman classifications.

f) Distinct terms and conditions of employment.

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. See, e.g., *Overnite Trans. Co.*, 322 NLRB 347, 349 (1996).

All of the classifications share many basic terms and conditions of employment. They all receive the same employee benefits package, use the same break room and cafeteria, are subject to the same policies and work rules, and have uniforms available to them if they choose to wear them.

There are both similarities and differences in the work locations of the respective classifications. All of the contested classifications spend at least part of their time in the production area or, with respect to the strategic specialist, in the warehouse. The engineering technicians and engineering specialist have cubicles in Building 100, similar to the maintenance technicians who have cubicles in the maintenance shop in Building 500. The process engineers, I&A employees, design draftsman, and strategic specialist, on the other hand, have offices in Building 200, apart from the production area, and the production planner's office is in a trailer.

The engineering technicians falls within pay grade 7, the same as some of the petitioned-for classifications. All of the other excluded classifications are in a higher pay grade than the petitioned-for classifications, falling within the grade range of 8 to 10 and earning between \$31.72 and \$47.30 an hour. Additionally, five positions – process engineer, I&A engineer, production planner, strategic specialist, and engineering specialist – are salaried exempt positions, a separate distinction from the petitioned-for classifications.

There are some other distinctions with respect to hours and location of work. Manufacturing operators, QC lab technicians, maintenance technicians and warehouse employees cannot work remotely from their homes because every aspect of their work can only be done at the plant. In contrast, the process engineers and design draftsman telework at least one day a week. The engineering technicians, whose jobs do require them to be present at the plant, work a compressed work schedule of four-day weeks, while the petitioned-for employees work five-day weeks.

I find that overall, with the exception of the engineering technician classification, this fact weighs against a finding that the petitioned-for classifications share a community of interest with the excluded ones.

iii. Step three of the Board's analysis: Board's decisions on similar units within the same industry

The Board in *Boeing* observed that there are no industry-specific guidelines applicable to

manufacturing plants, and it rejected the employer's contention that the Board established a presumption in favor of a plantwide unit for integrated manufacturing facilities that must be rebutted by a union seeking a smaller unit. At the same time, the Board conceded that a plantwide unit has been found to be presumptively appropriate under the Act, and so a community of interest inherently exists among such employees, citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962) (refusing to sever truck drivers from existing production and maintenance unit). *The Boeing Company*, 368 NLRB No. 67, slip. op. at 6 (2019).

On balance, and analyzing the above evidence in its totality, I find that the petitioned-for classifications do not share a meaningfully distinct community of interest separate and apart from the disputed classifications. Specifically, I find evidence of common departmental organization and supervision, similarities in skills and training and job overlap, and interchange among some of the classifications. More critically, I find significant functional integration and contact among all of classifications. Even though most of the excluded classifications earn higher wages than the petitioned-for classifications, that fact alone is not dispositive. See *TDK Ferrites Corp.*, 342 NLRB 1006, 1009 (2004) (finding that any distinct community of interest shared by the included employees on the basis of their earning higher wage rates was outweighed by the highly integrated nature of the workforce, the high degree of interaction and integration, and common supervision and other common terms and conditions of employment). I thus conclude that the petitioned-for unit is not appropriate for purposes of collective-bargaining, and that the smallest appropriate unit must also include the contested classifications.

II. Section 2(11) supervisory status of leads

The Act expressly excludes supervisors from its protection. Section 2(11) of the Act defines a supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Possession of any one of those attributes is enough to convey supervisory status, provided that the authority is exercised with independent judgement. See, e.g., *Pepsi-Cola Co.*, 327 NLRB 1062, 1063 (1999); *Michigan Masonic Home*, 332 NLRB 1409, 1409 (2000). Supervisory status may be shown if the alleged supervisor has the authority either to perform a supervisory function or to effectively recommend the same. If such authority is used sporadically, the putative supervisor will not be deemed a statutory supervisor. *Coral Harbor Rehabilitation and Nursing Center*, 366 NLRB No. 75, slip op. at 17 (2018). The supervisor has to at least act or effectively recommend such action "without control of others and form an opinion or evaluation by discerning and comparing data." *Oakwood Healthcare*, 348 NLRB 686, 692-693 (2006). Judgment is not independent when the putative supervisor follows detailed instructions such as policies, rules, or collective-bargaining agreement requirements. *Id.* at 693. Nor does independent

judgment encompass those actions that are a “routine or clerical nature,” sporadic or perfunctory. Id. at 693, citing *J.C. Brock Corp.*, 314 NLRB 157, 158 (1994). If a choice is obvious, the judgment is not independent. *Oakwood Healthcare*, supra at 693. The party asserting supervisory status has the burden of proving supervisory authority and must establish it by a preponderance of the evidence. Lack of evidence is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB 535, 536 fn. 8 (1999). Purely conclusory evidence is insufficient to establish supervisory status. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004); *Sears, Roebuck & Co.*, 304 NLRB 193, 194 (1991). Similarly, supervisory status is not demonstrated when evidence is in conflict or inconclusive. *Entergy Mississippi, Inc.*, 367 NLRB No. 109, slip op. at 2-3 (2019).

a. Assignment of work and responsible direction

To assign work within the meaning of Section 2(11), per *Oakwood Healthcare*, supra at 689, requires that the individual in question designate an employee to a place, such as a location or department, or time, such as a shift or overtime work, or give significant overall tasks to an employee. See also *Entergy Mississippi, Inc.*, 357 NLRB 2150, 2153 (2011). The “responsibility for making work assignments in a routine fashion does not make one a supervisor, nor does the assumption of some supervisory authority for a temporary period create supervisory status.” *Coral Harbor Rehabilitation and Nursing Center*, 366 NLRB No. 75, slip op. at 17-19 (2018). The supervisor has to at least act or effectively recommend such action “without control of others and form an opinion or evaluation by discerning and comparing data.”

The Employer asserts that lead manufacturing operators assign work. There is record evidence that lead operators discuss work schedules with supervisors and make suggestions on the assignment of work to operators based on the latter’s abilities. There is no evidence, however, that the leads are involved in setting the work schedules, aside from the recommendations they may offer, nor is there evidence of the frequency or the result of their recommendations. Thus, there is no evidence that the operator leads have the authority to assign employees. Lead operators may reassign operators to different areas within the production department if, for example, they are short-handed in an area because an employee called in sick. However, there is no evidence in the record of the frequency of these temporary reassignments within the production floor, and moreover, the assignments appear to be routine in nature, not requiring the use of independent judgment in the decision to move an operator to a different area or machine. An assignment that is based on whether an individual is capable of performing the job does not involve independent judgment. See *Croft Metals, Inc.*, 348 NLRB 717 (2006) (temporary work assignments dictated largely by what work the replacement is capable of performing do not establish authority to assign).

Furthermore, there is no record evidence establishing that the leads responsibly direct employees. The responsibility to direct requires that the person directing and performing the oversight of the employee is held accountable for such direction. *Oakwood Healthcare*, supra, 348 NLRB at 690-691. The Employer presented no evidence that the leads are subject to adverse actions or to rewards based on the performance of their coworkers. Instead, it appears their only responsibility is to inform their supervisor of issues that arose during the shift and to encourage

employees to work to meet production quotas.

There is no evidence that the lead lab technician assigns work or directs employees within the meaning of Section 2(11) of the Act.

b. Hire, transfer, suspension, lay off, recall, promotion, discharge, reward or discipline of other employees, or adjustment of their grievances

There is insufficient evidence to show that the lead manufacturing operators or the lead lab technician have authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward, or discipline employees, or to adjust their grievances within the meaning of Section 2(11).

The record is devoid of evidence that the leads have the authority to impose discipline or give effective recommendation for disciplinary actions. With respect to evidence that the lead lab technician kept notes about an employee's poor performance, merely reporting incidents or referring problems to a supervisor does not establish authority to discipline. See *Lucky Cab Co.*, 360 NLRB 2271, 272 (2014); *Coral Harbor*, 366 NLRB No. 75, slip op. at 20 (2018). Similarly, the isolated evidence that a lead manufacturing operator recommended that an employee be sent home was unsupported by evidence showing that the recommendation was followed without further deliberation by the involved supervisor.

There is also insufficient evidence to show that the lead lab technician rewarded employees based on his involvement in a points-based reward program implemented by his supervisor. Although he reported facts supporting the award of points, his supervisor made the award, and there is insufficient evidence to establish that those awards were made without consideration by the supervisor.

There is also no evidence that any of the leads have the ability to hire or effectively recommend hire. The Board has held that "mere participation in the hiring process, absent the authority to effectively recommend hire, is insufficient to establish...supervisory authority," even when the purported supervisor participates in the interview and assists in evaluating candidates for hire. See *North General Hospital*, 314 NLRB 14 (1994). Thus, although there is evidence that the QC lead participates in job interviews and is asked for his opinion for job candidates by his direct supervisor, the evidence does not show that he was otherwise involved in the hiring process, and there is insufficient evidence to establish that by providing his opinion he effectively recommended the hiring of the successful candidate. To the contrary, the record shows that ultimate hiring decisions reside with the human resources department. Similarly, there is insufficient evidence to show that any lead operator's suggestions for employee hires or transfers were executed without further independent consideration by either supervisors or the human resources department.

In sum, the Employer has failed to meet its burden to adduce sufficient evidence establishing that the QC lead lab technician and the lead manufacturing operators possess the authorities enumerated in Section 2(11) of the Act, and therefore they may be included in a unit of employees for collective bargaining.

III. Professional employees

Finally, the Union argues that the process engineers as well as the other classifications of employees who are salaried should be subject to a self-determination election under *Sonotone Corp.*, 90 NLRB 1236 (1950).

Under Section 2(12) of the Act, a professional employee is

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

I agree that the process engineers and the engineering specialist are professionals within the meaning of Section 2(12). The process engineers and engineering specialist perform work that requires the independent use of skills and advanced knowledge as well as a high degree of technical competence. Much of their work in devising new methods of production and modifications to those methods is predominantly intellectual, requiring the exercise of discretion and judgment. See *Oberthur Technologies of America Corp.*, 362 NLRB 1820, 1821, 1827 (2015) (finding manufacturing engineers to be professionals, where they applied their engineering skills to configure the workplace and flow of work to reduce waste and maximize production, and to troubleshoot the cause of defects and determining a means to prevent them). I do not find that the other salaried employees are professionals, as that factor alone is not dispositive of professional status, and the employees do not otherwise meet the criteria of Section 2(12). Accordingly, I shall direct a self-determination election as to the process engineers and engineering specialist.

C. Type of Election: Manual or Mail

The determination over the method of election rests within the sole discretion of the Regional Director, and therefore it is not a litigable issue. NLRB Casehandling Manual (Part Two), Representation Proceedings (CHM), Sections 11228 and 11301.2. Consistent with the CHM, the hearing officer solicited the parties' positions as to the type of election. The Employer and the Petitioner both requested a manual election. In *Aspirus Keweenaw*, 370 NLRB No. 45 (November

9, 2020), the Board set forth “six situations that suggest the propriety of mail ballots due to the Covid-19 pandemic,” noting that “[w]hen one or more of these situations is present, a Regional Director should consider directing a mail-ballot election.” *Id.*, slip op. at 1. Those situations are:

1. The Agency office tasked with conducting the election is operating under “mandatory telework” status;
2. Either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
4. The Employer fails or refuses to commit to abide by GC Memo 20-10, *Suggested Manual Election Protocols*;
5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status; or
6. Other similarly compelling circumstances.

As of April 13, 2021, the most recent date for which data is available, Delaware had 99,135 positive COVID-19 cases, and New Castle County, where the Employer’s facility is located, has 58,265.¹⁷ The current testing positivity rate for the county is 6.0%.¹⁸ The 14-day trend for positive cases shows a 13% increase.¹⁹ I also take note of the increasing prevalence of variants of the COVID virus in the United States, recognized for their potential to pose an increased risk of infection and death and attributed as a cause of the recent uptick in cases nationwide, and I consider that as a compelling circumstance.²⁰ Because the second and the sixth of the six situations identified in *Aspirus Keweenaw* are met, I therefore direct a mail ballot election, the details of which are below.

D. Conclusions and Findings

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will

¹⁷ <https://myhealthycommunity.dhss.delaware.gov/locations/state>.

¹⁸ <https://myhealthycommunity.dhss.delaware.gov/locations/county-new-castle>.

¹⁹ <https://www.nytimes.com/interactive/2021/us/delaware-covid-cases.html>.

²⁰ *As Variants Have Spread, Progress Against the Virus in the U.S. Has Stalled*, New York Times, April 6, 2021; <https://www.nytimes.com/interactive/2021/04/06/us/variants-cases-spread.html>.

effectuate the purposes of the Act to assert jurisdiction.

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

VOTING GROUP – UNIT A (PROFESSIONAL UNIT)

Included: All full-time and regular part-time process engineers and engineering specialist employed by the Employer at its 305 Water Street, Newport, Delaware facility.

Excluded: All other employees, manufacturing operators, lead manufacturing operators, maintenance technicians, quality control lab technicians, lead quality control lab technician, materials coordinator, shipping coordinator, packing coordinator, instrumentation and automation technician, instrumentation and automation specialist, process control engineer, engineering technicians, design draftsman, production planner, strategic inventory and supply chain specialist, guards, and supervisors as defined in the Act.

VOTING GROUP – UNIT B (NONPROFESSIONAL UNIT)

Included: All full-time and regular part-time manufacturing operators, lead manufacturing operators, maintenance technicians, quality control lab technicians, lead quality control lab technician, materials coordinator, shipping coordinator, packing coordinator, instrumentation and automation technician, instrumentation and automation specialist, process control engineer, engineering technicians, design draftsman, production planner, and strategic inventory and supply chain specialist employed by the Employer at its 305 Water Street, Newport, Delaware facility.

Excluded: All other employees, process engineers, engineering specialist, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to

be represented for purposes of collective bargaining by International Association of Machinists and Aerospace Workers, District Lodge 1, AFL-CIO.

A. Election Details

The election will be conducted by mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit on Wednesday, May 5, 2021. Voters must return their mail ballots so that they will be received by close of business on Wednesday, June 2, 2021. The mail ballots will be counted on Wednesday, June 9, 2021 at a time and location to be determined, either in person or otherwise, after consultation with the parties.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region Four office no later than 5:00 pm on Wednesday, May 12, 2021 in order to arrange for another mail ballot kit to be sent to that employee.

B. Voting Eligibility

Non-Exempt Employees: Eligible to vote are those in the unit who were employed during the payroll period ending April 3, 2021, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Exempt Employees: Eligible to vote are those in the unit who were employed during the payroll period ending March 30, 2021, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Friday, April 16, 2021**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: April 14, 2021



Thomas A. Goonan
Regional Director, Region Four
National Labor Relations Board